

REMARKS

Amendment to the specification has been made to overcome the Examiner's rejections.

In addition, amendment to the claims has been made to overcome the Examiner's rejection under 35 USC 112.

The Examiner has rejected claims 12-14 and 19-21 under 35 USC 102(b) as being anticipated by U.S. 3,731,902 to Shoemaker.

In addition, claims 12-14 and 19-22 have been rejected by the Examiner under 35 USC 102(b) as being anticipated by German reference 3810256.

The Applicant submits that anticipation is established only when a single prior art reference discloses, expressly, or under principles of inherency, each and every element of the claimed invention. RCA Corp. v. Applied Digital Data Systems, Inc., 221 USPQ 385 (Fed. Cir. 1984); *In re Sun*, 31 USPQ 2d 1451 (CAFC 1993); Advanced Digital Systems, Inc. v. Kent State University, 540 USPQ 2d 1673 (CAFC 2000).

Further, the Examiner must identify wherein each and every facet of the claimed invention is disclosed in the applied reference. *Ex Parte Levy*, 17 USPQ 2d 1461 (USPTO Board of Patent Appeals and Interferences 1990).

Further, the Applicant submits that anticipation must meet strict standards, and unless all of the same elements are found in exactly the same situation and united in the same way to form identical function in a single prior art reference, there is no anticipation. Tights, Inc. v. Acme-McCary Corporation, et al., 191 USPQ 305 (CAFC 1976).

With this criteria in mind, it is clear that neither Shoemaker nor the German reference teaches spacers, which are identically formed, or in the spaces with sealing lips are distinguished from spacers without sealing lips only by the additional sealing lip as presently claimed and set forth in pages 3 and 4 of the originally filed application. This feature provides for a modular system for facilitating forming different thicknesses of walls hereinbefore not taught or suggested by the prior art.

Accordingly, in view of the fact that all of the elements of the presently claimed invention are not taught by either of the references, anticipation cannot be sustained under 35 USC 102(b) and the Applicant respectfully requests the Examiner to withdraw the rejection of the claims under 35 USC 102(b).

Claims 15-17 have been rejected by the Examiner under 35 USC 103(a) on the basis of Shoemaker.

In view of the dependency of the these claims from independent claim 1, and the fact that Shoemaker does not suggest identically formed spacers with sealing lips which are distinguished from spacers without sealing lips, as hereinabove noted, the Applicants submits that the Examiner has not made a prima facie case of obviousness under 35 USC 103(a).

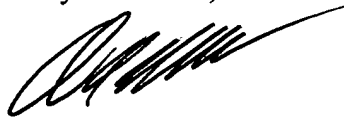
This same argument as reiterated by the Applicant with regard to the rejection of claims 15-17 on the basis of German reference 3810256 when construing Shoemaker and claims 12-17 and 19-21 rejected under 35 USC 103(a) as being unpatentable over Shoemaker in view of either Michalak or Dendinger.

In view of the Examiner's recognition that claims 18 and 22 would be allowable if rewritten, the Applicant has amended the claims accordingly.

In view of the arguments hereinabove set forth and amendment to the claims and specification, it is submitted that each of the claims now in the application define

patentable subject matter not anticipated by the art of record and not obvious to one skilled in this field who is aware of the references of record. Reconsideration and allowance are respectfully requested.

Respectfully submitted,



Walter A. Hackler, Reg. No. 27,792

Attorney of Record

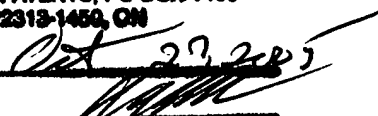
2372 S.E. Bristol, Suite B

Newport Beach, California 92660

Tel: (949) 851-5010

Fax: (949) 752-1925

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